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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

WILLARD PATRICK WITHAM, an  
Individual;

Plaintiff,

vs.

PERI FORMWORK SYSTEMS, INC., a  
Foreign Corporation; DOES I through X, and  
ROE BUSINESS ENTITIES I through X,  
inclusive;

Defendants.

Case No.: 2:21-cv-01632

**STIPULATION AND ORDER TO**  
**EXTEND DISCOVERY DEADLINES**  
**(SIXTH REQUEST)**

IT IS HEREBY STIPULATED AND AGREED between the Parties that the discovery cut-off date of September 15, 2023, be continued for a period of sixty (60) days, up to and including November 14, 2023. This is the sixth request to extend discovery deadlines. In support of this stipulation, the parties state as follows:

I. **DISCOVERY COMPLETED TO DATE**

a. Fed R. Civ. P. 26(a)(1) Initial Disclosures:

1 i. Plaintiff and all Defendants exchanged initial disclosures of witnesses and  
2 documents pursuant to FRCP 26 on November 5, 2021 and November 9, 2021, respectively.

3 b. Written Discovery:

4 i. Plaintiff sent out written discovery requests, including requests for interrogatories  
5 and requests for production of documents to Defendant Peri Formwork Systems, Inc. on January  
6 7, 2022. Defendant provided its responses to Plaintiff on March 11, 2022. In connection with its  
7 response to Plaintiff's requests for production of documents, Defendant provided Plaintiff with a  
8 flash drive containing over 48,000 pages of documents and exhibits, along with other data in the  
9 form of images and videos which is still being reviewed by Plaintiff's counsel.

10 ii. Defendants sent out written discovery requests, including requests for production  
11 of document, requests for admissions, and interrogatories to Plaintiff on May 18, 2022. Plaintiff  
12 provided responses to Defendant on June 17, 2022. In connection with its response to Defendant's  
13 requests for production of document, Plaintiff provided Defendant with authorization for  
14 employment records, authorization or release of workers' compensation information, request for  
15 copy of tax return, and authorization for us/disclosure of protected health information, which is  
16 still being reviewed by defendant's counsel.

17 c. Depositions:

18 i. Plaintiff's deposition went forward on January 10, 2023.

19 ii. The deposition of Ernesto Bendana, a former MJ Dean employee working on the  
20 MSG Sphere project with Plaintiff, went forward on January 5, 2023.

21 II. DISCOVERY THAT REMAINS TO BE COMPLETED

22 a. As stated above, Plaintiff has sent out written interrogatories and requests for production  
23 of documents to the Defendants. Plaintiff is currently reviewing Defendant's discovery responses  
24

1 to determine whether a second set of requests will be sent out. Plaintiff has been attempting to set  
 2 the 30(b)(6) depositions for Defendant. The 30(b)(6) deposition was scheduled for September 5,  
 3 2023, but was continued to September 18, 2023 at the request of the Defendant due to its  
 4 representative being out of state.

5 b. Depositions need to be completed as to third parties, i.e. the other persons working on the  
 6 job site and subpoena discovery of the employer and the general contractor of the project.

7 c. Defendants have sent out written interrogatories and requests for production of document  
 8 to the Plaintiff. Defendants are currently reviewing Plaintiffs discovery responses to determine  
 9 whether a second set of requests will be sent out.

10 d. Plaintiff has been attempting to schedule an inspection of exemplars of the equipment  
 11 provided by Defendant for use on the MSG Sphere project. The inspection was previously  
 12 scheduled to go forward on July 17, 2023, but was continued at the request of the Defendant. The  
 13 parties are working to re-schedule the inspection. The Defendant has provided a list of equipment  
 14 provided by Defendant to the MSG Sphere project and Plaintiff's experts are reviewing the list  
 15 and will provide Defendant with the equipment necessary for the inspection. The parties are in  
 16 active discussions regarding when and where the inspection will take place.

### 17 III. REASON FOR EXTENSION OF DISCOVERY DEADLINES

18 a. This is a complex case involving claims for strict product liability and negligence where  
 19 the Plaintiff was seriously injured on a construction site in Las Vegas. The parties have exchanged  
 20 a substantial amount of information, including potential witnesses, documents, images and  
 21 videos. Plaintiff anticipates its liability expert will need more time to review the over 48,000  
 22 pages of additional documents and data recently produced by Defendant. Plaintiff has also  
 23 produced to Defendant nearly 3,000 pages of documents, including Plaintiff's medical records  
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and the OSHA investigation file correlated to the incident at issue in this matter. Defendant's experts need adequate time to review all materials and prepare appropriate reports.

b. This case will also require extensive discovery of non-parties such as other workers on the job site, the Plaintiff's employer and the general contractor on the project.

c. The parties have agreed to mediation in this matter and are hopeful a resolution will result. A mediation has been scheduled for October 9, 2023 with the Honorable Jay Young. The parties wish to extend discovery deadlines in hopes that this matter will resolve.

#### IV. PROPOSED SCHEDULE FOR COMPLETING DISCOVERY

a. Discovery Cut-Off Date:

i. The parties propose that the discovery deadline date be extended for a period of sixty (60) days from September 15, 2023 to **Tuesday**, November 14, 2023.

b. FRCP 26(a)(2) Disclosure of Experts:

i. Closed.

c. Dispositive Motions:

i. The parties shall have until **December 15, 2023** to file dispositive motions. This agreed upon date is thirty (30) days after the discovery cut-off date as required by LR 26-1(b)(4).

d. Pre-Trial Order:

i. The parties will prepare a Pre-Trial Order on or before **January 15, 2024**, which is not more than thirty (30) days after the date set for the filing of dispositive motions as required by LR 26-1(b)(5). If dispositive motions are timely filed, this deadline date will be suspended for thirty (30) days until after decision or order of the dispositive motion is made or until further order of the Court. The disclosure required by FRCP 26(a)(3) and any objections thereto, shall be made in the Pre-Trial Order.

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e. Extensions or Modification of the Discovery Plan and Scheduling Order:

i. Pursuant to LR 26-3, a motion or stipulation to extend any date set by the discovery plan, scheduling order, or other order, must in addition to satisfying the requirements of LR IA 6-1, be supported by a showing of good cause for the extension; be received by the court no later than twenty-one (21) days before the expiration of the subject deadline; and any request within twenty-one (21) days of the subject deadline must be supported by a showing of good cause. Any request made after the expiration of the subject deadline will not be granted unless the movant also demonstrates that the failure to act was the result of excusable neglect. The motion or stipulation to extend a discovery deadline or to reopen discovery must include:

- a) A statement specifying the discovery completed;
- b) A specific description of the discovery that remains to be completed;
- c) The reasons why the deadline was not satisfied or the remaining discovery was not completed within the time limits set by the discovery plan; and
- d) A proposed schedule for completing all remaining discovery.

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1 This request is timely made pursuant to LR 26-4. Trial in this matter has not yet been set  
2 and dispositive motions have not yet been filed. As such, this extension will not delay this case.  
3 Moreover, since this request is a joint request, neither party will be prejudiced. This extension  
4 will allow the parties the time needed to adequately prosecute this case.

5 IT IS SO STIPULATED this 6<sup>th</sup> day of September 2023.

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14 Attorneys for Defendant

15 PERI FORMWORK SYSTEMS, INC.

16 **ORDER**

17 **IT IS SO ORDERED.**

18 DATED this 7th day of September 2023.

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20 UNITED STATES MAGISTRATE JUDGE